

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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ANTOWINE BUTTS,

NOTICE OF MOTION

Plaintiff, 01 CV 2945(BMC)(RML)

-against-

CITY OF NEW YORK, et al.,

Defendants.

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PLEASE TAKE NOTICE that upon the annexed 56.1 Statement, dated November 9, 2006; the Declaration of Hillary A. Frommer, dated November 9, 2006 and the exhibits attached thereto; the Memorandum of Law, dated November 9, 2006; and all of the pleadings and papers heretofore had herein, the undersigned will move this Court, before the Honorable Brian M. Cogan, United States District Judge for the Eastern District of New York, 225 Cadman Plaza East, Brooklyn, New York 11201, for an Order, pursuant to the Federal Rule of Civil Procedure 56, granting the motion for summary judgment by defendants City, Schulman, Hunter, Scarella, Chmil, Rice, Frank, and Getzler to dismiss the Amended Complaint in its entirety with prejudice on the grounds that: (1) plaintiff has voluntarily dismissed all federal claims against the City of New York and all claims against defendants Frank and Getzler; (2) plaintiff's false arrest claim is barred by the statute of limitations; (3) the false arrest claim fails because probable cause existed for plaintiff's arrest; (4) the malicious prosecution claim fails because plaintiff cannot overcome the presumption of probable cause established by the Grand Jury Indictment; (5) Defendants Schulman, Hunter, Scarella, and Chmil are entitled to qualified immunity; (6) plaintiff's claims against defendant Rice is barred by the Eleventh Amendment and defendant

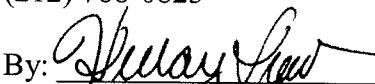
Rice is entitled to absolute prosecutorial immunity and qualified immunity; (7) plaintiff cannot state a claim for denial of legal representation; and (8) plaintiff's state law claims fail as a matter of law.

PLEASE TAKE FURTHER NOTICE that plaintiff's opposition papers, if any, shall be served upon counsel for defendants on or before December 11, 2006; and

PLEASE TAKE FURTHER NOTICE that defendants' reply papers, if any, shall be served upon plaintiff on or before December 26, 2006.

Dated: New York, New York
November 9, 2006

MICHAEL A. CARDOZO
Corporation Counsel of the City of New York
Attorney for Defendants City, Schulman, Hunter, Scarcella,
Chmil, Rice, Frank, and Getzler
100 Church Street
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By: 
Hillary A. Frommer (HF 9286)
Assistant Corporation Counsel

TO: Michael L. Spiegel, Esq.
111 Broadway, Suite 1305
New York, New York 10006

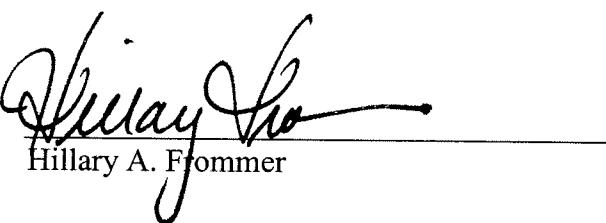
DECLARATION OF SERVICE

Hillary A. Frommer declares, under penalty of perjury and pursuant to 28 U.S.C. § 1746, that the following is true and correct: On November 13, 2006, I served the annexed **Notice of Motion, Defendants' Statement of Uncontested Facts Pursuant to Local Rule 56.1, the Declaration of Hillary A. Frommer and all of the exhibits attached thereto** upon Michael L. Spiegel, Attorney for the plaintiff, Antowine Butts, herein, by depositing a copy of same, enclosed in a first class, postpaid properly addressed wrapper in a post office/official depository under the exclusive care and custody of the United States Postal Service, within the State of New York, directed to said attorney at:

Michael L. Spiegel, Esq.
111 Broadway
New York, NY 10006
Tel. No. (212) 587-8558

being the address designated by said attorney for that purpose.

Dated: New York, New York
November 13, 2006



Hillary A. Frommer